

Message Text

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ORIGIN NEA-12

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DRAFTED BY DOD/OC:SHERO/L/NEA:ATBROWN:NEA/ARP:GQLUMSDEN

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APPROVED BY NEA/ARP:BWRAMPMEIER

DOD/ISA(NESA):JTIMBERLAKE

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R 111954Z JUL 73

FM SECSTATE WASHDC

TO AMEMBASSY MANAMA

INFO AMEMBASSY KUWAIT

CNO

CINCEUR

CINCUSNAVEUR

JAG NAVY

COMIDEASTFOR

C O N F I D E N T I A L STATE 135459

E.O. 11652:GDS

TAGS: MARR: PFOR: BA

SUBJECT: CRIMINAL JURISDICTION OVER US NAVAL PERSONNEL

REF: (A) COMIDEASTFOR 140955Z MAY 73; (B) COMIDEASTFOR
170925Z JUN 73; (C) MANAMA 279; (D) MANAMA 280; (E)
MANAMA 291; (F) MANAMA 354;(G) KUWAIT 2364;(H) MANAMA 395

1. DEPARTMENT AND DOD PLEASED WITH REF (B) REPORT THAT
CIVIL CLAIMS SETTLED IN CASE OF PO2 MASTERS. WE HAD HOPED
SETTLEMENT WOULD ENHANCE POSSIBILITY GOB WITHDRAWAL OF RE-
QUEST FOR JURISDICTION IN HIS CASE AS WELL AS EASE DIS-
CUSSION OF GENERAL ISSUE WAIVER REFLECTED IN REFTELS.
HOWEVER, UNTIL GOB RECEIVES WRITTEN STATEMENT RE SETTLE-
MENT REQUESTED BY FONMIN, WE DO NOT KNOW IF GOB WILL WITH-
DRAW REQUEST. DEPARTMENT AND DOD RECOGNIZE THAT IF GOB
PERSISTS IN ITS REQUEST, USG FAILURE GRANT WAIVER IN
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MASTERS CASE MAY NOW HEIGHTEN MANIFEST BAHRAIN CONCERN

WITH SCOPE OF PARA 11 STATIONING AGREEMENT AND UNDERLYING SOVEREIGNTY ISSUE.

2. IN EFFORT TO OBTAIN A WITHDRAWAL OF THE REQUEST IN MASTERS CASE--AND IN ADDITION TO NOTE (PARA 1 REFTEL G) REQUESTED BY FONMIN, WHICH WE ASSUME EMBASSY PREPARING--GOB SHOULD BE ADVISED OF USN INVESTIGATIVE EFFORTS AND REVIEW PROCEDURES, INCLUDING LEGAL FATIONALE FOR NOT TAKING DISCIPLINARY ACTION IN THIS CASE (COMIDEASTFOR FILES WILL BE HELPFUL ON THIS POINT).
ADVICE SHOULD INCLUDE FACT THAT COGNIZANT COURT-MARTIAL CONVENING AUTHORITY CANNOT LEGALLY REFER CHARGES TO A COURT-MARTIAL UNLESS CONVINCED COMPETENT EVIDENCE SUPPORTS THE CHARGE. GOB MAY BE ADVISED THAT IN FUTURE U.S. NAVY AUTHORITIES WILL REPORT TO APPROPRIATE GOB AUTHORITIES RESULTS OF NAVY DISCIPLINARY ACTION OVER OFFENSES ALSO PUNISHABLE UNDER LAWS OF BAHRAIN.

3. GOB SHOULD BE FURTHER ADVISED: WE REALIZE STATIONING AGREEMENT OBLIGATES USG TO GIVE GOOD FAITH CONSIDERATION TO GOB REQUEST FOR WAIVER OF JURISDICTION IN SPECIFIC CASES AND THAT SUCH CONSIDERATION WAS GIVEN IN MASTERS CASE AND WILL BE ACCORDED FUTURE CASES. CIRCUMSTANCES IN MASTERS CASE ARE NOT CONSIDERED TO JUSTIFY WAIVER. EVIDENCE DOES NOT CLEARLY INDICATE AN OFFENSE HAS BEEN COMMITTED, AND U.S. NAVY AUTHORITIES HAVE DETERMINED THAT PROSECUTION IS NOT WARRANTED. (SEE REF A FOR BASIS THIS DETERMINATION.)
FURTHER, REFTEL (F) INDICATED UNOFFICIAL VIEWS OF MINISTER OF STATE THAT CASE WAS ROUTINE TRAFFIC ACCIDENT WHICH, IF CONVICTION RESULTED, WOULD ONLY INVOLVE A FINE AS PUNISHMENT. THUS, EXCEPTIONAL GOB INTEREST IN THIS CASE IS NOT PERCEIVED.

4. FYI: IF WAIVER GRANTED IN THIS ROUTINE TRAFFIC CASE IT WOULD BE DIFFICULT TO DECLINE WAIVER IN FUTURE MORE COMPLICATED CASES. NET RESULT COULD BE THAT WAIVER WOULD BECOME THE USUAL, RATHER THAN THE EXCEPTIONAL RESULT AS CONTEMPLATED BY PARA 11 OF STATIONING AGREEMENT. AS GENERAL GUIDANCE, DEPARTMENT AND DOD WILL BE RELUCTANT TO WAIVE JURISDICTION WHEN ACCUSED IS SUBJECT TO PROSECUTION
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UNDER UCM J FOR ALLEGED DEFENSE. DEPENDENTS ND CIVILIAN EMPLOYEES ARE COVERED BY PARA 11 BUT ARE NOT PRESENTLY SUBJECT TO PROSECUTION UNDER UCM J, NOR WOULD THEY BE SUBJECT TO OTHER FEDERAL PROSECUTION FOR MOST OFFENSES COMMITTED IN BAHRAIN. FAILURE TO WAIVE JURISDICTION IN THEIR CASES COULD ALLOW A CRIME TO GO UNPUNISHED, RESULTING IN A MISCARRIAGE OF JUSTICE, AND THUS WAIVER GENERALLY WOULD BE APPROPRIATE. (END FYI).

5. ACCORDINGLY, DEPARTMENT AND DOD BELIEVE USG JURIS-
DICTION SHOULD NOT RPT NOT BE WAIVED IN PRESENT CASE. IF
GOB WILL NOT WITHDRAW REQUEST FOR WAIVER, NOTE DECLINING
WAIVER SHOULD BE PREPARED AND TRANSMITTED FOR CLEARANCE BY
DEPARTMENT AND DOD. REQUEST EMBASSY'S COMMENTS ON APPROACH
TO GOB SET FORTH ABOVE, INCLUDING IN PARTICULAR, EFFECT
DECLINE OF WAIVER MAY HAVE ON BROADER ISSUE OF GOB ATTITUDE
TOWARD PARA 11 GENERALLY.

6. RE REFTEL (G) REQUEST FOR STATE/DOD LAWYERS TO GO TO
BAHRAIN: WE WOULD PREFER AWAIT EMBASSY COMMENTS AND OUT-
COME EMBASSY DISCUSSIONS WITH GOB PRIOR TO MAKING DE-
CISION ON DISPATCHING TEAM. ROGERS

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